

## ARTICLE 81-12

### ALCOHOL AND BEER TAXES

#### Chapter

81-12-01 General Considerations - Alcohol and Beer Taxes

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#### GENERAL CONSIDERATIONS - ALCOHOL AND BEER TAXES

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**81-12-01-01. Forms.** The tax commissioner shall prescribe the necessary forms and procedures to ensure proper and efficient collection of beer and liquor taxes.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-02. Source of supply.** No wholesaler shall purchase any alcoholic beverage for resale from any source other than any of the following:

1. The manufacturer, rectifier, distiller, brewer, microbrewer, winery, or domestic winery producing the alcoholic beverage.
2. The owner of the trademark under which the alcoholic beverage is packaged for sale to retailers.
3. The United States importer or United States agent for a foreign manufacturer or trademark owner of the alcoholic beverage.
4. The expressly designated agent for North Dakota, or the primary American source of supply, of any of the above.

5. The wholesaler of alcoholic beverages.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05, 5-01-14, 5-01-17

**81-12-01-03. Liquor supplier reporting requirements.**

1. Liquor suppliers shall file reports detailing sales to wholesalers and returns from wholesalers. The report shall be a schedule A and must include all information required by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
2. The report is due no later than the thirtieth day of the month following the month in which a sale is made or in which product was returned. This applies to all reports except those due in February of each year. Reports due in February must be filed no later than the last day of the month. To be timely, reports mailed to the tax commissioner must be postmarked by midnight on the due date. Electronically filed reports must be submitted to the tax commissioner no later than midnight on the due date. When a due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working date after the Saturday, Sunday, or legal holiday.
3. The report is not required when there are no transactions to report.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06, 5-03-09

**81-12-01-04. Beer suppliers reporting requirements.** Except as provided in North Dakota Century Code section 5-01-16, beer shall not be sent or brought into North Dakota except to licensed wholesalers.

1. Beer suppliers shall file monthly reports detailing sales to wholesalers and returns from wholesalers. The report shall be a schedule C and must include all information required by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
2. The report is due no later than the thirtieth day of the month following the month in which the sales or shipment is made. This applies to all months except February of each year. The report for transactions occurring in the month of January is due no later than the last day of February. When the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday.
3. The report is not required when there are no transactions to report.

4. All beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler for delivery to such bona fide federal enclave in North Dakota shall have clearly identified on each individual item that such shall be for consumption within the federal enclave exclusively. Such identification must be in a form and manner prescribed and approved by the tax commissioner.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06, 5-03-09

**81-12-01-05. Beer wholesalers reporting requirements.**

1. Tax on beer purchased by a wholesaler is due on or before the fifteenth day of the month following the month of purchase. Payments may be made by check or by electronic means.
2. Reports covering beer purchased during each calendar month must be filed with the tax commissioner on or before the fifteenth day of the month following the month of purchase. The report must provide such detail and be in a format and on a form as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. To be timely, tax reports and tax payments mailed to the tax commissioner must be postmarked by midnight on the due date. Electronic tax payments and electronically filed tax reports must be submitted to the tax commissioner no later than midnight on the due date. If the due date falls on a Saturday, Sunday, or legal holiday, the tax payments and tax reports are due on the first business day following the Saturday, Sunday, or legal holiday.
4. Beer purchased from the brewery, or as allowed under section 81-12-01-02, in the preceding calendar month means all beer invoiced by the brewery, or those sources allowed under section 81-12-01-02, to the wholesaler.
5. Beer in bulk containers means containers other than bottles and cans.
6. Beer purchased from another beer wholesaler licensed in North Dakota shall not be reported if North Dakota tax was paid to the tax commissioner by the selling wholesaler. Neither wholesaler may take a tax credit under section 81-12-01-06 for these transactions.

7. Beer exported to another state must be reported.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-06. Beer tax credit.**

1. Beer wholesalers may be given credit of up to ten dollars on taxes paid on beer which cannot be sold in North Dakota upon receipt of a statement from the licensee explaining the reason such beer is not salable. Tax credits for larger amounts shall be allowed, upon satisfactory proof, after immediate notification to the tax commissioner of an event that prohibits sale of such beer in North Dakota, unless time is not important in proving the facts required by the tax commissioner.
2. Claims for tax credits on beer exported to another state shall be accompanied by a copy of the return filed in that state.
3. Invoices for sales to military reservations shall be sent to the tax commissioner with the monthly report.
4. Tax credits shall be allowed on bad accounts charged off for income tax purposes only after receipt of a copy of the tax return showing such and receipt of invoices showing the type and quantity of beverages purchased for which payment was not received.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-07. Liquor wholesalers reporting requirements.**

1. Tax on liquor sold by a wholesaler is due on or before the fifteenth day of the month following the month of sale. Payments may be made by check or by electronic means.
2. Reports covering liquor sales during each calendar month must be filed with the tax commissioner on or before the fifteenth day of the month following the month of purchase. The report must provide such detail and be in a format and on a form as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
3. To be timely, tax reports and payments mailed to the tax commissioner must be postmarked by midnight on the due date. Electronic tax payments and electronically filed tax reports must be submitted to the tax commissioner no later than midnight on the due date. If the due date falls on a Saturday, Sunday, or legal holiday, the tax payments and

tax reports are due on the first business day following the Saturday, Sunday, or legal holiday.

4. Liquor wholesalers shall retain copies of all invoices of liquor sold and make these invoices available for inspection upon request by the tax commissioner in a manner prescribed by chapter 81-01.1-04. The invoices shall show the name and address of the purchaser, the date of sale, the kind of merchandise, the number of cases, and the number and size of containers per case. The date of sale shall be the date of delivery.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-08. Cash for beer.** No wholesaler may sell beer to any retailer except for cash. Cash shall include a check dated on or before the day of delivery or an electronic funds transfer initiated on or before the day of delivery. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the tax commissioner. No sales shall be made to such retailer until the wholesaler notifies the wholesaler's competitors and the tax commissioner that the insufficient funds payment has been cleared.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05

**81-12-01-09. Commercial credit for liquor.** The normal commercial credit between liquor wholesalers and retailers is thirty days. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds which was given for merchandise received shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the tax commissioner. Any wholesaler having an unpaid retail account for merchandise received which is in excess of thirty days shall notify the wholesaler's competitors and the tax commissioner. No sale shall be made by any wholesaler to the account of a retailer who has or had possession of such merchandise until said delinquent account is paid in full and the wholesaler has notified the wholesaler's competitors and the tax commissioner accordingly. A retail account may not be deemed delinquent for any alleged sale in any instance where there exists a bona fide dispute between the licensee and the wholesaler as to the amount owing as a result of the alleged sale.

**History:** Effective June 1, 2002; amended effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06

### **81-12-01-10. Promotional items.**

1. A wholesaler is allowed to furnish miscellaneous materials to retailers provided the value of the materials furnished does not exceed one hundred dollars per calendar year.

For purposes of this subsection, "miscellaneous materials" means materials that advertise the manufacturer's or wholesaler's alcoholic beverage products.

2. A wholesaler is allowed to furnish point-of-sale items to retailers provided the value of the materials furnished does not exceed five hundred dollars per retail account.

For purposes of this subsection, "point-of-sale" items include outdoor signs, lights, window signs, coolers, and items of a similar nature, and may include manufacturer or wholesale items that advertise the manufacturer's or wholesaler's alcoholic beverage products for display purposes at the retailer location.

3. Contest prizes, premium offers, refunds, and like items may be offered by manufacturers and wholesalers for any consumer promotion. Retailers may distribute coupons and other consumer premiums to customers for redemption by the manufacturer or wholesaler, but not for redemption by the retailer. Retailers shall not seek reimbursement from a manufacturer or wholesaler for any consumer promotion. Officers, employees, and representatives of manufacturers, wholesalers, and retailers shall be excluded from participation in such promotions.

**History:** Effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05

**81-12-01-11. Recordkeeping - Items provided to retailers.** Each manufacturer or wholesaler of alcoholic beverages shall maintain on file the previous calendar year's records of all equipment, supplies, services, and retailer advertising specialty and product display items furnished to retailers. The previous calendar year's records may be discarded when a next calendar year's records are complete and available for inspection. Records must be made available for inspection by the state tax commissioner upon request.

The records must contain the:

1. Name and address of the retailer receiving the equipment, supplies, services, and retailer advertising specialty and product display items;
2. Item or items furnished;
3. Date item or items furnished;

4. Manufacturer's or wholesaler's cost of the item or items furnished as determined by the manufacturer's invoice price; and
5. Charges to the retailer for the item or items.

**History:** Effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05, 5-03-06

**81-12-01-12. Equal information to retailers.** Any beer wholesaler who publishes, mails, delivers, or distributes, or in any way directly or indirectly disseminates written price information about alcoholic beverages shall disseminate that information to all of its retailers and the state tax commissioner.

**History:** Effective April 1, 2006.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-12